

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 35693 & 35694

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 460
	)	
Plaintiff-Respondent,	)	Filed: May 11, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JOSHUA HOLMAN,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. John M. Melanson, District Judge.

Orders revoking probation and reinstating previously suspended sentences with two counts of possession of a controlled substance and possession of stolen property, affirmed.

Molly J. Huskey, State Appellate Public Defender; Elizabeth A. Allred, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before PERRY, Judge; GUTIERREZ, Judge;  
and GRATTON, Judge

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PER CURIAM

In Docket No. 35693, Joshua Holman pled guilty to an amended count of possession of a controlled substance, I.C. § 37-2732(c)(1). The district court sentenced Holman to a unified term of seven years, with a minimum period of confinement of three years. In Docket No. 35694 Holman pled guilty to one count of possession of a controlled substance and one count of grand theft by possession of stolen property, I.C. §§ 18-2403, 18-2407(1). The district court sentenced Holman to a unified term of seven years, with a minimum period of confinement of three years, for possession of a controlled substance and a unified term of ten years, with a minimum period of confinement of three years, for grand theft by possession of stolen property. The district court

ordered that all three of Holman's sentences be served concurrently. However, the district court retained jurisdiction and thereafter placed Homan on probation for three years.

Subsequently, Holman was found to have violated the terms of his probation, and the district court consequently revoked probation. The district court sua sponte reduced Holman's grand theft sentence to a unified term of seven years, with a minimum period of confinement of three years. Thereafter, Holman filed an I.C.R. 35 motion for reduction of his sentences. The district court granted Holman's motions and reduced his sentences to unified terms of seven years, with minimum periods of confinement of two years. Holman appeals, contending that the district court abused its discretion in revoking his probation.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

When we review a sentence that is ordered into execution following a period of probation, we do not base our review upon the facts existing when the sentence was imposed. Rather we examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *Adams*, 115 Idaho at 1055, 772 P.2d at 262; *State v. Grove*, 109 Idaho 372, 373, 707 P.2d 483, 484 (Ct. App. 1985); *State v. Tucker*, 103 Idaho 885, 888, 655 P.2d 92, 95 (Ct. App. 1982).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion in revoking probation or in ordering execution of

Holman's modified sentences. Therefore, the orders revoking probation and directing execution of Holman's previously suspended sentences are affirmed.